

RESOLUTION NO. 0387

**RESOLUTION OF THE SOUTH BEND REDEVELOPMENT
COMMISSION APPROVING A PROPOSED LEASE BETWEEN THE
SOUTH BEND REDEVELOPMENT AUTHORITY, AS LESSOR, AND
THE REDEVELOPMENT COMMISSION, AS LESSEE, FOR CERTAIN
LAND AND PUBLIC IMPROVEMENTS, APPROVING PRELIMINARY
PLANS, SPECIFICATIONS AND COST ESTIMATES, SETTING A
PUBLIC HEARING ON THE PROPOSED LEASE PURSUANT TO IC 36-
7-14-25.2, AND AUTHORIZING PUBLICATION OF NOTICE
OF THE PUBLIC HEARING**

WHEREAS, the South Bend Redevelopment Commission (the "Commission"), governing body of the South Bend Department of Redevelopment and the South Bend Redevelopment District (the "Redevelopment District"), exists and operates under the provisions of Indiana Code 36-7-14, as amended from time to time (the "Act"); and

WHEREAS, the Commission has adopted various resolutions (i) declaring certain real estate in the Redevelopment District, known as the Northeast Neighborhood Development Area (the "Area"), to be a redevelopment area within the meaning of the Act, determining that it would be of public utility and benefit to redevelop the Area pursuant to a development plan, as amended, and (ii) designating the entire Area as an allocation area ("Allocation Area No. 1") having boundaries as described in Declaratory Resolution No. 2016, as amended; and

WHEREAS, the Commission has amended this designation so that a portion of the Area and Allocation Area No. 1 are deemed a housing program named the "Northeast Neighborhood Development Area Housing Program" and a housing allocation area named the "Northeast Neighborhood Development Area, Allocation Area #2" ("Allocation Area No. 2"); and

WHEREAS, Kite Realty Group, L.P. has proposed a mixed use development commonly known as the Eddy Street Commons development encompassing approximately twenty-three (23) acres located in the City of South Bend adjacent to the University of Notre Dame campus and which mixed use development is proposed to include the following: retail shops, apartment homes, office space, one full service hotel with conference facilities and three floors of condominiums, one limited service hotel, condominium homes in four different product types, open space and a parking garage structure (collectively, the "Development"); and

WHEREAS, the Commission desires to undertake certain local public improvements in support of the Development in or serving the Area including, without

limitation: a parking garage structure; the reconstruction and/or the extension of Eddy, Burns, Georgiana, Duey, and Napoleon Streets; the upgrading and replacement of water mains, sanitary and storm sewers and site preparation; the extension and upgrading of electrical, telephone and high speed internet services; other related services including, without limitation, engineering and geotechnical testing; and related improvements (collectively, the "Project"); and

WHEREAS, the Common Council of the City has previously adopted an ordinance creating the South Bend Redevelopment Authority (the "Authority") pursuant to Indiana Code 36-7-14.5 as a separate body, corporate and politic, and as an instrumentality of the City of South Bend, Indiana, to finance local public improvements for lease to the Commission; and

WHEREAS, there has been presented to the Commission at this meeting a form of proposed lease with the Authority for lease of the Project ; and

WHEREAS, the preliminary plans, specifications and cost estimates for the Project have been filed with the Commission; and

WHEREAS, the Commission desires to approve the proposed lease and publish notice of public hearing and conduct a public hearing on the proposed lease pursuant to Section 25.2 of the Act; and

WHEREAS, after the public hearing, the Commission may adopt a resolution pursuant to Section 25.2 of the Act authorizing the execution of the proposed lease on behalf of the City of South Bend, Indiana (the "City"), if it finds that the service to be provided throughout the term of the proposed lease will serve the public purpose of the City and is in the best interests of its residents and the lease rental provided for is fair and reasonable;

NOW, THEREFORE, BE IT RESOLVED by the South Bend Redevelopment Commission as follows:

1. The Commission hereby approves the preliminary plans, specifications and cost estimates which have been filed with the Commission and the form of lease filed with the Commission and attached hereto as Exhibit A.

2. The Commission hereby determines that the Project is not a "controlled project" as such term is defined by IC 6-1.1-20-1.1 because the Commission reasonably expects to pay the lease payments from funds other than property taxes that are exempt from the levy limitations of IC 6-1.1-18.5, such other funds being tax increment and other revenues made available to the Commission for such purpose.

3. The Commission hereby schedules the public hearing on the lease to be held at the regular meeting of the Commission scheduled for November 2, 2007, at 10:00 a.m. (local time).

4. The Commission hereby authorizes the publication of a notice of public hearing on the lease pursuant to IC 5-3-1.

5. This resolution shall be in full force and effect after its adoption by the Commission.

* * * * *

Adopted at a meeting of the South Bend Redevelopment Commission held on October 9, 2007, at the County-City Building, Room 1308, 227 West Jefferson Boulevard, South Bend, Indiana.

SOUTH BEND REDEVELOPMENT
COMMISSION

By: 
President , Marcia I. Jones

ATTEST:


Secretary , Gregory S. Downes

Resolution No. 2387

Exhibit A
Form of Lease

LEASE

Between

SOUTH BEND REDEVELOPMENT AUTHORITY

and

SOUTH BEND REDEVELOPMENT COMMISSION

DATED AS OF OCTOBER 15, 2007

(Eddy Street Commons Project)

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LEASE

This Lease entered into as of the 15th day of October, 2007, between the SOUTH BEND REDEVELOPMENT AUTHORITY, a body corporate and politic organized and existing under Indiana Code 36-7-14.5 (the "Authority") and the SOUTH BEND REDEVELOPMENT COMMISSION, the governing body of the City of South Bend Department of Redevelopment and the Redevelopment District of the City of South Bend, Indiana (the "Lessee"), acting for and on behalf of the City of South Bend, Indiana.

WITNESSETH:

Section 1. Definitions. The terms defined in this Section 1 shall for all purposes of this Lease have the meanings herein specified unless the context otherwise requires.

"Act" means Indiana Code 36-7-14.5, as the same from time to time may be amended or supplemented.

"Authority" means the South Bend Redevelopment Authority, a body corporate and politic organized and existing under the Act, or if said Authority shall be abolished, the authority, board, body, instrumentality or agency succeeding to the principal functions thereof.

"Bonds" means South Bend Redevelopment Authority Lease Rental Revenue Bonds (Eddy Street Commons Project).

"Eddy Street Commons Principal and Interest Account" means the account by that name created in the Redevelopment District Bond Fund by the Lease Resolution.

"Lease" means this Lease as the same may be amended, modified or supplemented by any amendments or modifications hereof or supplements hereto entered into in accordance with the provisions hereof.

"Lessee" means the South Bend Redevelopment Commission, the governing body of the City of South Bend Department of Redevelopment and the Redevelopment District of the City of South Bend, Indiana, or if said Commission shall be abolished, the commission, board, body or agency succeeding to the principal functions thereof.

"Lease Resolution" means the resolution of the Commission passed on _____, 2007, establishing funds for the payment of lease rentals.

"Permitted Encumbrances" means those items listed in Exhibit A hereto and any future (a) liens for taxes not then delinquent, (b) this Lease and the Trust Agreement, leases, subleases and other agreements permitted pursuant to Section 13 hereof, (c) utility, access and other easements and rights-of-way, restrictions and exceptions that Lessee certifies will not interfere with or impair the Project, (d) any mechanics', laborers', materialmen's, suppliers' or vendors' lien or right in respect thereof

if payment is not yet due and payable and (e) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as do not, in the opinion of the Trustee, materially impair the Authority's title or Lessee's use of the Project.

"Project" means the real estate (including all right-of-way easements contained therein) in St. Joseph County, Indiana, and the local public improvements to be completed thereon by the Authority or its agent according to the plans and specifications prepared by its consultants, all as described in Exhibit B hereto. The above mentioned plans and specifications may be changed and additional construction work may be performed and improvements may be purchased by the Authority, but only with the approval of the Lessee, and only if such changes or modifications or additional construction work or improvements do not alter the character of the Project or reduce the value thereof. Any such additional construction work or additional improvements shall be part of the property covered by this Lease. The above-mentioned plans and specifications have been filed with and approved by the Lessee.

"Redevelopment District Bond Fund" means the Redevelopment District Bond Fund of Lessee authorized by Indiana Code 36-7-14-27 and the Lease Resolution.

"Trust Agreement" means the Trust Agreement dated as of _____, 2007, between the Authority and the Trustee, securing the Bonds.

"Trustee" means the financial institution selected to serve as trustee pursuant to the Trust Agreement, and any successor trustee.

Any term not defined herein, which is defined in the Lease Resolution or in the Trust Agreement, shall have the meaning as defined in such resolution or agreement.

Section 2. Lease of Project. In consideration of the rentals and other terms and conditions herein specified the Authority does hereby lease, demise and let to the Lessee the Project: TO HAVE AND TO HOLD the same with all rights, privileges, easements and appurtenances thereunto belonging, unto the Lessee for a term not to exceed Twenty-five (25) years, beginning on the date the Project is complete and ready for use and ending on the day prior to such date at most Twenty-five (25) years thereafter. However, the term of this Lease shall terminate at the earlier of (a) the exercise of the option to purchase by Lessee and payment of the option price, or (b) the payment or defeasance of all obligations of Lessor incurred (i) to finance the cost of the leased property, (ii) to refund such obligations, (iii) to refund such refunding obligations. The date the Project is complete and ready for use shall be endorsed on this Lease at the end hereof by the parties hereto as soon as the same can be done after such completion date and such endorsement shall be recorded as an addendum to this Lease. The Authority hereby represents that it is possessed of, or will acquire, a good and indefeasible estate in fee simple or an insurable right-of-way easement subject only to Permitted Encumbrances, to the above-described real estate, and the Authority warrants and will defend the same against all claims whatsoever not suffered or caused by the acts or omissions of the Lessee.

Section 3. Rental Payments.

(a) During the term of this Lease, the Lessee agrees to pay rental for said premises as set forth in Section 4 hereof. Such rental shall be paid from the Eddy Street Commons Principal and Interest Account of the Redevelopment District Bond Fund. All rentals payable under the terms of this Lease shall be paid to the Trustee or to such other bank or trust company as may from time to time succeed the Trustee under the Trust Agreement. All payments so made shall be considered as payments to the Authority of the rentals payable hereunder. The Lessee shall receive credit for any Bond maturing within seven (7) days of the date of the lease rental payment, at the face value thereof, which the Lessee acquires and delivers to the Trustee as a part of its lease rental payment; and

(b) As additional rental the Lessee agrees to pay all fees, charges and reimbursement of expenses of the Trustee under the Trust Agreement and all prudent charges and expenses of the Authority incurred in the performance of its obligations hereunder.

Section 4. Rental Payment Dates and Amounts. The first semiannual rental installment in the amount of One Million Eight Hundred Fifty-eight Thousand Five Hundred and 00/100 Dollars (\$1,858,500.00) shall be due on the day that the Project is complete and ready for use or February 1, 2011, whichever is later. If completion is later than February 1, 2011, the first installment shall be in an amount which provides for rental at the rate of \$1,858,500.00 for the semiannual period in which the Project is complete and ready for use, prorated from the date of completion until the first February 1 or August 1 following such date of completion. Thereafter such rentals shall be payable in advance in semiannual installments of \$1,858,500.00 on February 1 and August 1 of each year until the rental is increased as set forth herein.

The last semiannual rental payment due before the expiration of this Lease shall be adjusted to provide for rental at the amount specified above for the applicable semiannual period prorated from the date such installment is due to the date of the expiration of this Lease (without taking into account any subsequent early termination of this Lease pursuant to Section 2 hereof).

After the sale of the Bonds issued by the Authority to pay the cost of the Project and other expenses incidental thereto, the sum of the first and second semiannual rental installments and the sum of the third and fourth semiannual rental installments, and so on, shall be reduced to an amount equal to the multiple of One Thousand Dollars (\$1,000.00) next highest to the highest sum of principal and interest due in any year ending on a Bond maturity date on such Bonds plus Three Thousand Dollars (\$3,000), payable in equal semiannual installments, assuming for such purposes that the semiannual rental installment payable following acquisition of the Project is due on February 1, 2011. Such amount of reduced annual rental shall be endorsed on this Lease at the end hereof by the parties hereto as soon as the same can be done after the sale of said Bonds, and such endorsement shall be recorded as an addendum to this Lease.

The Lessee will not take any action or fail to take any action that would result in the loss of the exclusion from gross income for federal tax purposes of interest on the Bonds pursuant to Section 103(a) of the Internal Revenue Code of 1986, as amended (the "Code"), as in effect on the date of delivery of the Bonds, nor will the Lessee act in any manner which would adversely affect such exclusion. The Lessee further covenants that it will not make any investment or do any other act or thing during the period that any Bond is outstanding hereunder which would cause any Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code and the regulations thereunder as in effect on the date of delivery of the Bonds. All officers, members, employees and agents of the Lessee are authorized and directed to provide certifications of facts and estimates that are material to the reasonable expectations of the Lessee as of the date the Bonds are issued and to enter into covenants on behalf of the Lessee evidencing the Lessee's commitments made herein.

Section 5. Abatement of Rent. In the event that all or a portion of the Project shall be damaged or destroyed so as to render the damaged or destroyed portion of the Project unfit for its intended use, it shall then be the obligation of the Authority to restore and reconstruct the damaged or destroyed portion of the Project as promptly as may be done, unavoidable strikes and other causes beyond the control of the Authority excepted, if, in the opinion of an independent registered architect, registered engineer, construction manager or contractor selected by the Lessee and acceptable to the Trustee, (i) the cost of such restoration or reconstruction does not exceed the amount of the proceeds received by the Authority from the insurance provided for in Section 9 hereof plus other moneys available therefor and (ii) such restoration or reconstruction can be completed within the period of time covered by the rental value insurance provided for in Section 9 hereof. If either or both conditions shall not exist, the proceeds received from the insurance provided for in Section 9 hereof shall be applied to the option to purchase price provided for in Section 14 hereof. The rental shall be abated pro rata for the period during which the damaged or destroyed portion of the Project is unfit for its intended use.

Section 6. Net Lease. It is expressly understood and agreed that this Lease shall be what is known as a net lease (i.e., the rent being absolutely net to the Authority and that all other expenses in connection with the Project of any nature whatsoever shall be those of the Lessee) and that during the lease term the Lessee shall be obligated to pay as its expenses without reimbursement from the Authority all costs of taxes and assessments, if any, and maintenance, operation and use in connection with or relating to the Project, including but not limited to all costs and expenses of all services, repair or replacement of all parts of the Project or improvements of the Project.

Section 7. Nonliability of Authority. The Authority shall not be liable for damage caused by hidden defects or failure to keep the Project in repair and shall not be liable for any damage done or occasioned by or from plumbing, gas, water, or other pipes or the bursting or leaking of plumbing or heating fixtures in connection with said premises, nor for damage occasioned by water, snow or ice. The Authority shall not be liable for any injury to the Lessee or any sublessee of the Lessee or any other person which injury occurs on, in or about the Project howsoever arising. The Authority shall not be liable for damage to the Lessee's property or to the property of any sublessee of the Lessee or of any other person which may be located in, upon or about the Project.

Section 8. Alterations. Lessee shall have the right, without the consent of the Authority, to make all alterations, modifications and additions and to do all improvements it deems necessary or desirable to the Project, which do not reduce the rental value of the Project.

Section 9. Insurance. The Lessee, at its own expense, will, during the full term of the Lease, keep the Project insured against physical loss or damage, however caused, with such exceptions as are ordinarily required by insurers of properties of a similar type, in good and responsible insurance companies acceptable to the Authority. Such insurance shall be in an amount at least equal to the greater of (i) the option to purchase price or (ii) one hundred percent (100%) of the full replacement cost of such Project as certified by a registered architect, a registered engineer, or professional appraisal engineer, selected by the Authority with the approval of the Trustee, on the effective date of this Lease and on or before the first day of April of each year thereafter; provided that such certification shall not be required so long as the amount of such insurance shall be in an amount at least equal to the option to purchase price. Such appraisal may be based upon a recognized index of conversion factors. In no event shall the insurance be in an amount which causes the Lessee to be a co-insurer for the Project. Such insurance may contain a provision for a deductible in an amount not exceeding \$25,000. Lessee agrees to pay the deductible amount of any loss to the Authority. A blanket public institutional property insurance form may be used if:

- (a) the insurance on the Project is not less than the amount required by this Section,
- (b) the Lessee subordinates its claim for damage or destruction to other buildings or improvements to claims for damage or destruction of the Project, and
- (c) the insurance proceeds related to damage to or destruction of the Project are payable to the Trustee.

During the full term of this Lease, the Lessee will also, at its own expense, maintain rental or rental value insurance in an amount at least equal to the full rental specified in Section 4 for a period of two (2) years against physical loss or damage of the type insured against pursuant to the preceding requirements of this Section. Such policies shall be for the benefit of and shall be made payable to the Trustee.

Section 10. Use of Insurance and Condemnation Proceeds. Proceeds of insurance against damage to or destruction of the Project or proceeds of any condemnation of the Project shall be paid to and held by the Trustee and used to pay for reconstruction or replacement of the Project in accordance with plans approved by the Authority and the Lessee, unless the Lessee elects to exercise its option to purchase.

Section 11. Liability Insurance. The Lessee shall, at all times during the full term of this Lease, keep in effect, public liability and property damage insurance, insuring the Lessee, the Authority and the Trustee in amounts customarily carried for similar properties. Such insurance may be provided under the public liability self-insurance program of the City of South Bend.

Section 12. General Insurance Provisions. All insurance policies required by Sections 9 and 11, shall be with insurance companies rated B+ or better by A.M. Best Company (or a comparable rating service if A.M. Best company ceases to exist or rate insurance companies), and shall be countersigned by an agent of the insurer who is a resident of the State of Indiana, and such policies, or copies thereof, and the certificate of the architect or engineer referred to in Section 9 shall be deposited with the Authority and the Trustee. If, at any time, the Lessee fails to maintain insurance in accordance with Sections 9 and 11, such insurance may be obtained by the Authority, or may be obtained by the Trustee, and the amount paid for such insurance shall be added to the amount of rental payable by the Lessee under this Lease; provided, however, that neither the Authority nor the Trustee shall be under any obligation to obtain such insurance, and any action or non-action of the Authority or Trustee in this regard shall not relieve the Lessee of any consequences of a default in failing to obtain such insurance.

Section 13. General Covenants. The Lessee shall not assign this Lease. The Lessee covenants that, except for Permitted Encumbrances, it will not encumber the Project, or permit any encumbrance to exist thereon, and that it shall use and maintain the Project in accordance with the laws and ordinances of the United States of America, the State of Indiana, and all other proper governmental authorities. The Authority agrees that it will, at the request of the Lessee, execute and deliver to or upon the order of the Lessee such instrument or instruments as may be reasonably required by the Lessee in order to subject the Project, or the Authority's interest therein, to such encumbrances as shall be specified in such request and as shall be permitted by the provisions of this Section 13 or otherwise by the definition of "Permitted Encumbrances".

Section 14. Option to Purchase. The Authority hereby grants Lessee the right and option, on any rental payment date, upon thirty days' written notice to the Authority, to purchase the Project at a price equal to the amount required to enable the Authority to provide for the redemption of all outstanding Bonds, all premiums payable on the redemption thereof, and accrued and unpaid interest, and to pay the cost of redeeming the Bonds and liquidating the Authority if it is to be liquidated.

Upon request of the Lessee, the Authority agrees to furnish an itemized statement setting forth the amounts required to be paid by the Lessee on the next rental payment date in order to purchase the Project in accordance with the preceding paragraph.

If the Lessee exercises its option to purchase, the Lessee shall pay to the Trustee that portion of the purchase price which is required to provide for the payment of all the Bonds, including all premiums payable on the redemption thereof, accrued and unpaid interest thereon and the costs of redemption thereof. Such payment shall not be made until the Trustee gives to the Lessee a written statement that such amount will be sufficient to retire all Bonds including all premiums payable on the redemption thereof and accrued and unpaid interest.

The remainder of such purchase price, if any, shall be paid by the Lessee to the Authority. Nothing herein contained shall be construed to provide that the Lessee shall be under any obligation to purchase the Project, or under any obligation in respect to any creditors or bondholders of the Authority.

If the Lessee has not exercised its option to purchase the Project at the expiration of the term of the Lease and upon the full discharge and performance by the Lessee of its obligations under this Lease, the Authority shall execute a deed of the Project to the Lessee conveying good and merchantable title thereto, subject only to Permitted Encumbrances.

Section 15. Defaults. If the Lessee shall (a) default in the payment of any rentals or other sums payable to the Authority hereunder, or in the payment of any other sum herein required to be paid for the Authority, (b) fail to comply with the terms set forth in the Lease Resolution, or (c) default in the observance of any other covenant, agreement or condition hereof, and such default under (c) shall continue for ninety (90) days after written notice to correct the same, then, in any of such events, the Authority may proceed to protect and enforce its rights, either at law or in equity, by suit, action, mandamus or other proceedings, whether for specific performance of any covenant or agreement contained herein or for the enforcement of any other appropriate legal or equitable remedy.

Section 16. Notices. Whenever either party shall be required to give notice to the other under this Lease, it shall be sufficient service of such notice to deposit the same in the United States mail, in an envelope duly stamped, registered and addressed to the other party at its last known place of business. A copy of any notice shall be mailed by first-class mail to the Trustee at its last known place of business.

Section 17. Construction of Covenants. All provisions contained herein shall be construed in accordance with the provisions of the Act and to the extent of inconsistencies, if any, between the covenants and agreements in this Lease and the provisions of the Act, the provisions of said Act shall be deemed to be controlling and binding upon the parties.

Section 18. Successors or Assigns. All covenants of this Lease, whether by the Authority or the Lessee, shall be binding upon the successors and assigns of the respective parties hereto.

* * * * *

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed for and on their behalf as of the day and year first hereinabove written.

SOUTH BEND REDEVELOPMENT
AUTHORITY

By: _____
President

ATTEST:

Secretary-Treasurer

SOUTH BEND REDEVELOPMENT
COMMISSION

By: _____
President

ATTEST:

Secretary

STATE OF INDIANA)
) SS:
COUNTY OF ST. JOSEPH)

Before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, personally known by me to be the President and Secretary-Treasurer, respectively, of the South Bend Redevelopment Authority, and acknowledged the execution of the foregoing Lease for and on behalf of said Authority.

WITNESS my hand and Notarial Seal this ____ day of _____, 200__.

(SEAL)

(Written Signature)

(Printed Signature)

My commission expires: _____
Resident of St. Joseph County, Indiana

STATE OF INDIANA)
) SS:
COUNTY OF ST. JOSEPH)

Before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, personally known by me to be the President and Secretary, respectively, of the South Bend Redevelopment Commission, and acknowledged the execution of the foregoing Lease for and on behalf of said Commission.

WITNESS my hand and Notarial Seal this ____ day of _____, 200__.

(SEAL)

(Written Signature)

(Printed Signature)

My commission expires: _____
Resident of St. Joseph County, Indiana

"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document unless required by law." _____.

This instrument was prepared by Randolph R. Rompola, BAKER & DANIELS LLP, 205 West Jefferson Boulevard, Suite 250, South Bend, Indiana 46601.

EXHIBIT A

PERMITTED ENCUMBRANCES

The encumbrances and exceptions to the title set forth on the Policy of Title Insurance covering the real estate and improvements thereon which are subject to the Lease to be provided at the time the Bonds are delivered.

EXHIBIT B

PROJECT DESCRIPTION

The Project consists of certain local public improvements including, without limitation: a parking garage structure; the reconstruction and/or the extension of Eddy, Burns, Georgiana, Duey, and Napoleon Streets; the upgrading and replacement of water mains, sanitary and storm sewers and site preparation; the extension and upgrading of electrical, telephone and high speed internet services; other related services including, without limitation, engineering and geotechnical testing; and related improvements in an area known as the Eddy Street Commons development in the City and to be located generally within an area bounded on the north by Edison Road, on the west by Eddy Street, on the south by State Road 23 and on the east by the eastern boundary of the Northeast Neighborhood Development Area, Allocation Area #2.